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THE RELATION OF THE EXECUTIVE TO THE LEGISLATIVE POWER.

JAMES T. YOUNG.

Twenty years ago the author of "Congressional Government" declared that all the checks and balances of our political system had failed to preserve the balance of power between the three departments of government, and that the result was Congressional supremacy. To-day we must admit that these checks and balances are still unavailing but that we now live under a system of executive supremacy. Is this change due chiefly to factors of personality or does it correspond to new conditions in the social and economic life of the people? Is executive supremacy to be explained away by reciting the names—Cleveland, Harrison, McKinley, Roosevelt—or has something far more fundamental than a mere growth of personal influence taken place? Certainly the latter is true.

Aside from the element of personality, four important causes have tended to produce the changed relations between executive and legislature:

- I. The growth in volume of government business.
- II. The rise of new public questions of a technical character.
- III. The popular demand for greater speed in government action.
- IV. The growing unwieldiness of large legislative bodies.

I. Growth of the Volume of Public Business. The present volume of governmental affairs is not explained by the necessary increase of population, the extension of the national boundaries or the development of new sections of the country. While these have added their share, the great majority of governmental tasks have been occasioned by the development of the manufacturing and transportation interests of the country. This development has of necessity brought with it a division into separate, distinct economic classes and interests. The existence of these distinct groups has created two sets of demands, one for government action favorable to the group interests, the other for government regulation and restriction or

supervision of the activities of the group. From both sides our governments are assailed with requests for action. With each step forward in the development of these industries and with each attempt on their part to secure a more profitable adjustment of their internal organization, some new form of public regulation or supervision is invoked and from this a marked increase of the volume of government business arises. The recent report of the Chief of the Bureau of Corporations in the Department of Commerce and Labor affords a notable instance of this process. In 1887 it was felt that the trusts were the result of railroad rebates. The Interstate Commerce Law of that year arose from this belief. In 1890 industrial combination had reached a point where it could supposedly be reached by a law prohibiting restraint of interstate trade. The Sherman Act resulted. In 1903 it was believed that the evils of over-capitalization might be reached by publicity and the government jurisdiction was again extended. In 1904 the Bureau established to secure publicity advocates the licensing of corporations engaged in interstate commerce and this brings into the forum of public discussion the question of the further extension of government regulation. As a result of these and similar extensions of government power each Congress is now burdened with over 20,000 bills and resolutions. In the great volume of matters brought to its attention the legislative assembly cannot regulate in detail but is forced to enact outline laws, leaving to the executive the duty of filling in these outlines by regulations, orders and rules. The administrative side of the government is thereby charged with the duty of determining the content and the spirit of legislation within certain general limits.

II. It has become a platitude to say that modern business is more complex than formerly. This trite saying is particularly true of governmental affairs. The problems which we now face do not admit of settlement by a popular vote. The standard of intelligence of our citizenship is doubtless rising, yet the voter is not capable of working out a plan of government regulation or control.

The location of an Isthmian Canal, the reorganization of

the army, the construction of a navy, the more rational development of our postal facilities, the planning of systems of irrigation, the regulation of corporate finance, the control of railway rates and the management of our colonial dependencies are national questions of prime importance; but their settlement cannot depend upon a simple consensus of public opinion. They require rather the careful study of trained specialists and experts. If we examine the public problems brought up for discussion in the President's message it will be seen that they are pre-eminently industrial or commercial in character and that they are technical rather than popular. The numbers and importance of this class of public problems are growing by leaps and bounds,—a fact which necessarily brings into greater prominence the executive as the expert branch of the government.

III. The demand for quick government. One feature of our economic conditions that has largely escaped the attention of publicists, is the influence of means of communication upon government. This influence is indirect but none the less powerful in its action. Better means of transport and communication not only create a general quickening in the pace of commerce and manufactures; they also involve a subtler change in the psychology of the people. Our interests and our mental processes are reaching out beyond the narrower local environment and are becoming national and even cosmopolitan in scope. But by this same fact they move more quickly. We are intolerant of delay in business or government. The continued outcropping of lynch law in advanced communities is not always a sign of simple mob lawlessness but is frequently an expression of our whole attitude towards the action of the State. Doubtless it were better that more deliberation might sometimes be exercised in public affairs; but such is not the view of the people at large. Therefore the government must act and act quickly. But our legislative machinery was deliberately planned to secure slow action, while the executive is lightning-like in its swiftness. For illustration, a change in the method of interpreting and administering our immigration laws involves a newspaper article pointing to an evil in

the present system, an official investigation lasting about three days, a report, and finally a telegram of instructions from Washington to San Francisco, New York or Philadelphia. A change in the laws themselves, on the contrary, requires the formation of a strong public sentiment, a session, two sessions or several years spent in compromises, amendments and discussion, and finally the passage of the bill in an amended or weakened form. Administrative action by its very quickness carries with it something of the arbitrary; certainly it is capable of serious abuse if not exercised with care, but in the main it satisfies the demands of the time and is growing rapidly in popular favor. This fact strikes us most forcibly in the national government because the centralization of power there is more impressive, but the principle holds equally true of our cities. With the construction of every trolley-line and the elevation of every telephone or telegraph wire the possibility of, and the popular demand for the swifter exercise of municipal authority is increased. Even in our commonwealths, the number of problems which cannot await the more leisurely treatment of the legislative assembly, but must be solved from day to day, is becoming so large as to occasion a shifting of power to the administrative officials. In leaving the discussion of this point it should be noted that a larger amount of human energy and attention is constantly being devoted to time-saving devices of all kinds. The demand for speed feeds upon itself and the influence of this demand upon the relative positions of the legislative and executive departments may apparently be even stronger in the future than at present.

IV. At first glance it might seem that the greater size of our legislatures is a natural compensation for the increase in the public business; with more work to do we have more legislators to do it and the possibility of a greater division of labor. But larger numbers in a legislative assembly mean slower procedure and greater difficulty in transacting business. With each addition to our City Councils, State Legislatures and National Congress, the unwieldiness of those bodies becomes more apparent and the possibility of maintaining the present forms

of legislation more difficult. So our National House of Representatives has 386 members, the lower house of the State Legislature of New York 150, of Pennsylvania 204, of Massachusetts 221, of Connecticut 255; the Board of Aldermen of New York City has 73 members; the Common Council of Philadelphia 115, the Chicago Council 70, etc.

All of these bodies were originally organized with reasonable numbers, but by the increase of population and territory have become enlarged far beyond the necessities of the case. There is no satisfactory reason why a city legislative body should be encumbered with more than thirty members; it cannot be contended that such a number is required to represent the various localities in the city nor that any more accurate representation of the popular will results from the larger body. The state and national bodies are proportionally excessive in size. In order to remedy this an effort has been made to diminish the independence of the individual member and render him subordinate to the party leader. Session after session the individual member revolts against the arbitrary rules of the leaders, but without avail; the rules are necessary to secure the transaction of legislative business.

In spite of all this oppressive procedure, however, the difficulty of securing rapid legislative action is still so great that the program of a session usually includes few measures of general importance.

Closely connected with the cumbersomeness of our legislative assemblies is the confusing, complicated, indefinite and uninteresting character of their proceedings. The public mind cannot be aroused and held by the Congress as it can by the President. The acts of the executive have all that clear, sharp definiteness and point which attach to the doings of an individual, whereas an assembly proposes, refers, debates, amends and approves a measure only to pass it on to the other house.

Finally, it is not the mere slowness of action which has robbed the legislature of popular interest, but rather the growing consciousness of loss of popular control over the immediate acts of that body. The proceedings no longer represent

with reasonable accuracy the feelings of the people. The debates of half a session are sometimes made to deal with measures of secondary importance, while the leaders are busily preparing the real program. When this is ready the stage is reset, the old, time-consuming bills are unceremoniously whisked out of the way, and the pre-concerted measures are then attempted to be rushed through with the severest limitations of debate. Not only the slowness but the cumbersome indirectness of Congressional activity is the result of large numbers.

These four causes, rather than the particular personality of the administrative chief, have called forth the system of executive supremacy. In the last analysis Congress and the President are keen competitors for the interest, the enthusiasm and the sympathetic approval of the people. In that earliest epoch of our national history when the minds of men were governed by the remembrance of former tyranny and the fear of a new despotism, it was natural and inevitable that Americans should look to Congress for the protection of their liberties and the expression of their political beliefs. At that stage of the competition Congress, as the possessor of the qualities of deliberation, traditional jealousy of the executive and habitual care of the rights of the people, certainly deserved and received the first place in the confidence of the citizenship. But at present with the advent of the new conditions already outlined it would be strange indeed if the President were not awarded this preferment. The executive office stands emphatically for those qualities and characteristics which we now consider as typically American—efficient, purposeful, definite, quick action.

With this shifting of the relations between the two departments of government there arises a series of important problems which will have to be faced if executive supremacy is to be continued as a feasible and satisfactory system of government. The first of these is the adjustment of the legal relations between the two departments. At present the legislative leadership of the administrator must be exercised through devious and indirect channels. The annual message is of insignificant value in this respect. It must be supplemented by the drafting of bills in the various administrative departments and the

introduction of these bills through legislators friendly to the administration. The executive officers must appear before legislative committees and use what influence they can to secure favorable action by these committees. The chief executive must form the personal and political friendship which will advance the legislative measures for which his administration stands, and to this end he must use his various powers and prerogatives. He must strive to create within the legislative body, by all of these indirect means, a sentiment of respect for the prestige of the administration. In short, the American President has all of the work which the British Prime Minister and the Cabinet perform, but he is at present subject to all the hindrances of a system calculated on the needs of the eighteenth century. To do away with these anomalous and obstructive legal conditions is the problem of the immediate future.

In the second place, there is the need of some system of administrative courts to protect the citizen from the arbitrary action of subordinate officials. If government regulation is to be extended with each step forward in our industrial and commercial development, there will be opened up an immense field of supervision, inspection, regulation and control, bringing the public official into close contact with the citizen in a thousand different ways. To increase the points of contact without increasing the friction is a difficult and delicate task. We already need judges trained in the distinctively administrative questions of government who can, by a speedy and inexpensive procedure, decide on points of dispute between administrator and citizen in such a way as to maintain the efficiency of the government and safeguard the rights of the individual.

Lastly, executive supremacy gives rise to the need of a closer and more sympathetic touch between the Chief Administrator and the people. This can hardly be done by the adoption of Constitutional or legal provisions. It is a question which the people themselves must solve. There would seem to be but one feasible means of doing so, i. e., the extension of those great voluntary civic associations of a quasi-public nature which aim to bring to the attention of the government official

the needs of the people and their views upon public acts. In that part of our governmental system in which the executive is most prominent, namely, in our city governments, the role of these associations has been wonderfully enlarged within the last two decades, and as we in our national political institutions come to rely more and more upon the one-man power we must aim to strengthen and enlarge the scope of these great civic societies in the national field.

THE BEGINNINGS OF WAR.

THEODORE S. WOOLSEY.

The topic for discussion given me by our Executive Committee was originally, as printed in our programme, "What Constitutes a Declaration of War," suggested doubtless by the early stages of the present war in the East. But as full liberty was granted to alter this subject, I shall somewhat broaden my title and ask your attention to those steps, diplomatic and then forcible, which close negotiations and begin hostilities and which may perhaps properly be summed up under the caption "The Beginnings of War." Of these steps a Declaration of War may or may not be one.

Here lie two main topics or lines of inquiry:

(1) At what point in the discussion of a serious international question will a resort to violence be the natural next step and not a treacherous act?

(2) From what moment does a war date?

If it were necessary, or even customary that a formal declaration of intent to make war beginning at a set time, should precede hostilities, neither of these inquiries would be needful. Perhaps such a rule is desirable. The whistle of the referee is at once a fair warning and marks a fixed moment. It legalizes the beginning of violence. But although war is called a game and has highly conventionalized rules, it is a game without a referee. The whistle must be blown by the disputants, not by a third party. And if there is no whistle—no declaration—we must try to find an equivalent for it, a di-